

HARVEY P. SACKETT (72488)

**S A C K E T T**  
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Attorney for Plaintiff

/as

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

KIMO C. GOMEZ,	)	Case No.: 1:22-cv-00770-DAD-AC
	)	
Plaintiff,	)	STIPULATION AND [PROPOSED]
	)	ORDER FOR THE AWARD AND
v.	)	PAYMENT OF ATTORNEY FEES
	)	PURSUANT TO THE EQUAL
MARTIN O'MALLEY, <sup>1</sup>	)	ACCESS TO JUSTICE ACT, 28
Commissioner of Social Security,	)	U.S.C. § 2412(d)
	)	
Defendant.	)	
	)	

On December 20, 2023, this Court issued an order reversing the final decision of the Defendant, Martin O'Malley, the Commissioner of Social Security (Commissioner), with a remand for a rehearing, 42 U.S.C. § 405(g) (sentence four); judgment was entered.

<sup>1</sup> Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as Defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 In the interest of administrative and judicial economy, the parties have agreed to stipulate  
2 that an award of FIVE THOUSAND ONE HUNDRED FOUR DOLLARS AND SIXTY-EIGHT  
3 CENTS (\$5,104.68) in attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C.  
4 § 2412(d), is reasonable. This award is without prejudice to Plaintiff's right to seek attorney's  
5 fees under section 206(b) of the Social Security Act, 42 U.S.C. § 406(b), subject to the offset  
6 provisions of the EAJA. However, this award shall constitute a complete release from and bar to  
7 any claims Plaintiff may have relating to EAJA fees and costs. Further, such award shall not be  
8 used as precedent in any future cases, nor be construed as a concession by the Commissioner that  
9 the original administrative decision denying benefits to Plaintiff was not substantially justified.

10 After the Court issues an order for EAJA fees to Plaintiff, the Government will consider  
11 the matter of Plaintiff's assignment of EAJA fees to Harvey P. Sackett ("Counsel"). Pursuant to  
12 *Astrue v. Ratliff*, 560 U.S. 586 (2010), the ability to honor an assignment will depend on whether  
13 the fees are subject to any offset allowed under the United States Department of the Treasury's  
14 Offset Program. After the order for EAJA is entered, the Government will determine whether  
15 they are subject to offset. Fees shall be made payable to Plaintiff, but if the Department of  
16 Treasury determines Plaintiff does not owe a federal debt, then the Government shall cause the  
17 payment of fees, expenses, and costs to be made payable directly to Counsel, pursuant to the  
18 assignment executed by Plaintiff. Any payments made shall be delivered and made payable to  
19 Counsel.

20 Accordingly, Defendant agrees to pay Plaintiff \$5,104.68 in attorney's fees.

21 All parties whose signature lines appear in this document have consented to its filing.  
22 This award is without prejudice to the rights of Sackett and Associates and/or Harvey P. Sackett  
23 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the savings clause  
24 provisions of the EAJA.

25  
26 Dated: January 26, 2024

SACKETT AND ASSOCIATES

By: /s/ HARVEY P. SACKETT  
HARVEY P. SACKETT  
Attorney for Plaintiff  
KIMO C. GOMEZ

Dated: January 29, 2024


PHILLIP A. TALBERT  
United States Attorney

By: /s/ ELIZABETH LANDGRAF  
ELIZABETH LANDGRAF  
Special Assistant United States Attorney  
Attorney for Defendant  
[\*As authorized by email on 1/26/24]

**ORDER**

Pursuant to the stipulation, IT IS SO ORDERED.

Dated: January 29, 2024

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE